

Appl. No. 09/965757  
Amdt. Dated 06/23/2005  
Reply to the Final Office Action of April 25, 2005

### **REMARKS/ARGUMENTS**

This Amendment is in response to the Final Office Action mailed April 25, 2005. In the Office Action, claims 9-16 were rejected under 35 U.S.C. § 101 and claims 1-17 were rejected under 35 U.S.C. § 103. Reconsideration in light of the amendments and remarks made herein is respectfully requested.

#### ***Rejection Under 35 U.S.C. § 101***

Claims 9-16 were rejected under 35 U.S.C. § 101. Applicant traverses the rejection because the claimed invention, as a whole, produces a useful, concrete and tangible result, namely formulating regions of reusable instructions for object code optimization as set forth on page 4, lines 2-12 of the subject application. In fact, physical structures such as registers are described in the claims as well.

In accordance with MPEP §2106 and the requirements listed thereof, Applicant respectfully submits that the claims 9-16 are directed to patentable subject matter and withdrawal of the §101 rejection is respectfully requested.

#### ***Rejection Under 35 U.S.C. § 103***

Claims 1-17 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Lowry, a publication entitled "Object Code Optimization," in view of Chang, a publication entitled "Using Profile Information to Assist Classic Code Optimizations." Applicant respectfully traverses the rejection.

As noted on Page 11 of the Office Action, it appears to be suggested by the Examiner that Chang teaches tail duplication, but agrees that such operations are directed to a different purpose than separating reusable instructions as claimed. Applicant respectfully disagrees that the "application of tail duplication for a different purpose than the cited art does not distinguish the application over the prior art." In fact, as the Examiner is aware, obviousness cannot be established absent some teaching, suggestion or incentive supporting the combination of the

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teachings of cited references. *See ACS Hospital Systems, Inc. v. Monteffiore Hospital*, 732 F.2d 1572, 1577, 221 U.S.P.Q. 929, 933 (Fed. Cir. 1984).

As stated, the teaching of the tail duplication of Chang is directed to the formation of super blocks through trace structures. In contrast, the tail duplication is used to separate reusable instructions after selection of initial regions, which is neither taught nor suggested by Chang. Moreover, the combination of Lowry and Chang, alone or in combination, does not suggest the tail duplication as a mechanism to separate reusable instructions after selection of initial regions in the pursuit of optimizing object code as further explicitly claimed.

Hence, Applicant respectfully requests that the §103 rejection be withdrawn.

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**Conclusion**

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

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By

  
William W. Schaal

Reg. No. 39,018

Tel.: (714) 557-3800 (Pacific Coast)

12400 Wilshire Boulevard, Seventh Floor  
Los Angeles, California 90025

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